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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

1 This action is responsive to the amendment filed on June 15, 2006.

2 Claims 1-2, 4-6, 8, 10, 16-26, 29-34, 36-56 and 60-68 stand rejected under 35 U.S.C.

103(a) as being unpatentable over Matsunaga et al. (US 2001/0054206 A1) in view of Laurent et al. (US 2002/0046431 A1), for the reasons set forth in the previous office action mailed on March 15, 2006.

3 Claims 3, 7, 9 and 11-15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US 2001/0054206 A1) in view of Cottard et al. (US 2001/0023514 A1), for the reasons set forth in the previous office action mailed on March 15, 2006.

4 Claim 35 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US 2001/0054206 A1) in view of Cottard et al. (US 2001/0023514 A1) and further in view of Giuseppe et al. (US 5,744,127), for the reasons set forth in the previous office action mailed on March 15, 2006.

5 Claims 27-28 and 57-59 are objected to for the reasons set forth in the previous office action mailed on March 15, 2006.

Response to Applicant's Arguments

6 Applicant's arguments filed 6/15/2006 have been fully considered but they are not persuasive.

With respect to the rejection of claims 1-2, 4-6, 8, 10, 16-26, 29-34, 36-56 and 60-68 under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US' 206 A1) in view of Laurent et al. (US' 431 A1), Applicant argues that there is no motivation or suggestion to combine the references to arrive at the claimed invention.

Art Unit: 1751

The examiner respectfully disagrees with the above arguments because Matsunaga et al. (US' 206 A1) as a primary reference suggests the use of cationic, amphoteric, natural and synthetic polymers as the genus polymers in the hair dyeing composition that also comprises fluorescent dyes (see page 1, paragraph, 0008 and page 3, paragraphs, 0024 and 0026). Laurent et al. (US' 431 A1) as a secondary reference in analogous art, teaches the polymers of cationic polyurethane of the claimed formula (Ia) (see page 3, paragraphs, 0096-0104 and page 6, paragraph, 0157). Therefore, there is a clear suggestion and sufficient motivation to one having ordinary skill in the art to be motivated to incorporate the claimed cationic polymers of polyurethane derivatives as taught by Laurent et al. (US' 431 A1) in the dyeing composition of Matsunaga et al. (US' 206 A1) to arrive at the claimed invention with the reasonable expectation of success for improving the dyeing properties of the composition by reducing the premature oxidation of the oxidation dyes. Therefore, the prima facie case of obviousness has been established and the rejection under 103(a) is proper and maintained.

With respect to the rejection of claims 3, 7, 9 and 11-15 under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US' 206 A1) in view of Cottard et al. (US' 514 A1), Applicant argues that there is no motivation or suggestion to combine the references to arrive at the claimed invention because Matsunaga at page 3, teaches natural or synthetic polymers as the optional components.

The examiner respectfully disagrees with the above arguments because the use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain. "*In re Heck*, 699 F.2d 1331, 1332-33 216 USPQ 1038, 1039 (Fed. Cir. 1983)

Art Unit: 1751

(quoting *In re Iemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). Further, a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed.Cir.), *cert. denied*, 493 U.S. 975 (1989).

In this case Matsunaga et al. (US' 206 A1) as a primary reference suggests the use of natural and synthetic polymers as the genus polymers in the hair dyeing composition that also comprises fluorescent dyes (see page 1, paragraph, 0008 and page 3, paragraphs, 0024 and 0026). Cottard et al. (US' 514 A1) as a secondary reference in analogous art, teaches the claimed species of anionic polymer of monoethylenically unsaturated carboxylic acid type and nonionic polymer of polyether polyurethane (see page, 4). Therefore, there is a clear suggestion and sufficient motivation to one having ordinary skill in the art to be motivated to incorporate the claimed anionic and nonionic polymers as taught by Cottard et al. (US' 514 A1) in the dyeing composition of Matsunaga et al. (US' 206 A1) to arrive at the claimed invention with the reasonable expectation of success for improving the dyeing properties of the composition. Therefore, the *prima facie* case of obviousness has been established and the rejection under 103(a) is proper and maintained.

With respect to the rejection of claim 35 under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US' 206 A1) in view of Cottard et al. (US' 514 A1) and further in view of Giuseppe et al. (US' 127), Applicant argues that the rejection of claim 35 is improper because claim 35 depends on claim 1, which is rejected under 103(a) over Matsunaga in view of Laurent, instead of Cottard.

Art Unit: 1751

The examiner would like to point out that the rejection of claim 35 under 103(a) can be made by combining Matsunaga et al. as a primary reference that teaches the fluorescent dye with the combination of (US' 514 A1) or (US' 431 A1) that both teach and disclose some associative polymers of claim 1 and further in view of Giuseppe. In other words Laurent et al. (US' 431 A1) teaches cationic associative polymers of claim 1 (associative polyurethane derivatives) and Cottard et al. (US' 514 A1) teaches nonionic associative polymers of claim 1 (associative polyurethane and associative cellulose polymers). Therefore, the rejection of claim 35 can be made by incorporating the teaching of Laurent et al. (US' 431 A1) or Cottard et al. (US' 514 A1) in combination with Matsunaga and Giuseppe.

7 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

Art Unit: 1751

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Eisa Elhilo
Primary Examiner
Art Unit 1751

August 18, 2006